

SETTLERS UPON MIAMI RESERVE IN KANSAS.

MARCH 29, 1860.—Ordered to be printed.

Mr. BURROUGHS, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of certain persons residing upon the Miami Indian reserve, in Kansas, report:

That the petition has attached to it 175 names, all of which are apparently in the handwriting of one person.

The petitioners represent that they settled in "good faith" upon the land, believing that they had the right to do so, but fail to show facts from which good faith can be presumed.

The title of the Miami Indians to the lands in question, as well as the design of the government, are fully shown by the treaty of June 5, 1854, which will be regarded as sufficient notice to all persons; and as this treaty was made several years before the parties intruded upon these lands, the pretence of "good faith" is without foundation.

Articles 1, 2, and 3 of the treaty are as follows, (Treaty with the Miami Indians, June 5, 1854, Statutes at Large, vol. 10, p. 1093:)

ARTICLE 1. The said Miami Indians hereby cede and convey to the United States all that certain tract of country set apart and assigned to the said tribe, by the article added by the Senate of the United States, by resolution of the date of February twenty-fifth, one thousand eight hundred and forty-one, to the treaty of November twenty-eighth, one thousand eight hundred and forty, and denominated among the amendments of the Senate as "Article 12," which was assented to by said Indians on the fifteenth day of May, one thousand eight hundred and forty-one; which tract is designated in said article as "bounded on the east by the State of Missouri, and on the north by the country of the Weas and Piankeshaws, on the west by the Pottowatomies of Indiana, and on the south by the land assigned to the New York Indians, estimated to contain five hundred thousand acres," excepting and reserving therefrom seventy thousand acres for their future homes, and also a section of six hundred and forty acres for school purposes, to be selected and assigned to said tribe as hereinafter provided.

ART. 2. The United States shall, as soon as it can conveniently be done, cause the lands herein ceded and reserved to be surveyed as the government lands are surveyed, the Miamis bearing the expense of survey of the reserved land ; and, within four months after the approval of such surveys, each individual or head of a family of the Miami tribe now residing on said lands, shall select, if a single person, two hundred acres ; and if the head of a family, a quantity equal to two hundred acres for each member of the family ; which selections shall be so made as to include in each case, as far as practicable, the present residences and improvements of each person or family, and where it is not practicable, the selection shall fall on lands in the same neighborhood. And if, by reason of absence or otherwise, any single person or head of a family entitled to land as aforesaid shall fail to make his or her selection within the period prescribed, the chiefs of the tribe shall proceed to select the lands for those thus in default. The chiefs shall also select the six hundred and forty acres hereinbefore reserved for their school, to include the buildings erected for school purposes, and to embrace a sufficient portion of timber land. After all of the before-named selections shall have been made, the said chiefs shall further proceed to select, in a compact body, and contiguous to the individual reservations, the residue of the seventy thousand acres excepted and reserved by the preceding article, which body of land shall be held as the common property of the tribe, but may at any time, when the chiefs and a majority of the tribe request it, be sold by the President in the manner that public lands of the United States are sold, and the proceeds, after deducting the expense of such sale, be paid to the tribe under the direction of the President, and in such mode as he may prescribe : *Provided*, That if any single person or family entitled to land shall have been overlooked or wrongfully excluded, and shall make the fact appear to the satisfaction of the chiefs, such person or family may, with the approbation of the Commissioner of Indian Affairs, receive their quantity by the rule prescribed in this article out of the tract to be thus selected and held as the common property of the tribe. All the selections herein provided for shall, as far as practicable, be made in conformity with the legal subdivisions of United States lands, and immediately reported to the agent of the tribe, with apt descriptions of the same, and the President may cause patents to issue to single persons or heads of families for the lands selected by or for them, subject to such restrictions respecting leases and alienation as the President or Congress of the United States may impose ; and the lands so patented shall not be liable to levy, sale, execution, or forfeiture : *Provided*, That the legislature of a State within which the ceded country may be hereafter embraced may, with the assent of Congress, remove these restrictions. When selections are so made, or attempted to be made, as to produce injury to, or controversies between, individuals which cannot be settled by the parties, the matters of difficulty shall be investigated and decided on equitable terms by the chiefs of the tribe, subject to appeal to the agent, whose decision shall be final.

ART. 3. In consideration of the cession hereinbefore made, the

United States agree to pay to the Miami tribe of Indians the sum of two hundred thousand dollars in manner as follows :

The petitioners ask for the repeal of sections 2 and 3 of chapter 155, passed June 12, 1858.

The second section provides for the removal by force of intruders upon Indian reserves ; and its provisions should be rigidly enforced, and the good faith of the government preserved.

Section 3 provides for the allotment of a portion of the Miami reserve, and its passage demanded for the fulfilment of the treaty of June 5, 1854.

The sections sought to be repealed are as follows, (Statutes at Large, volume 11, page 329 :)

CHAPTER CLV. An act making supplemental appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1859.

SEC. 2. *And be it further enacted*, That the Commissioner of Indian Affairs be, and he hereby is, authorized and required, with the approval of the Secretary of the Interior, to remove from any tribal reservation any person found therein without authority of law, or whose presence within the limits of the reservation may, in his judgment, be detrimental to the peace and welfare of the Indians ; and to employ for the purpose such force as may be necessary to enable the agent to effect the removal of such person or persons.

SEC. 3. *And be it further enacted*, That the Secretary of the Interior be, and he is hereby, authorized and directed to pay to such persons of Miami blood as have heretofore been excluded from the annuities of the tribe since the removal of the Miamies in eighteen hundred and forty-six, and since the treaty of eighteen hundred and fifty-four, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded ; and he is also authorized and directed to enroll such persons upon the pay-list of said tribe, and cause their annuities to be paid to them in future: *Provided*, That the foregoing payments shall be in full of all claims for annuities arising out of previous treaties. And said Secretary is also authorized and directed to cause to be located for such persons each two hundred acres of land out of the tract of seventy thousand acres reserved by the second article of June fifth, eighteen hundred and fifty-four, with the Miamies, to be held by such persons of the same tenure as the locations of individuals are held which have been under the third article of said treaty.

Approved June 12, 1858.

It appears by a report made to the Commissioner of Indian Affairs, that the number of white persons upon the Miami reserve is about eight hundred.

And it is admitted, by persons representing the petitioners, that a very large amount of valuable timber has been taken from the reserve by these intruders ; and that the alleged improvements made by petitioners in many cases consist solely in cutting and carrying off timber to market. And it is believed that the tempting, valuable timber

lands of the Miamies have allured most if not all of these settlers to the commission of trespasses, amounting in damages to the lands much greater than the value of all their improvements.

Pursuant to the law above recited, the Commissioner of Indian Affairs caused notice to be served upon these intruders to remove from the reserve.

In answer to a letter addressed to the Commissioner of Indian Affairs upon the subject, Hon. A. B. Greenwood returned the following reply :

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, March 7, 1860.

SIR: I have the honor to acknowledge the receipt of your letter of the 2d instant, containing certain inquiries respecting intrusions upon the Miami national reserve in Kansas Territory, and in reply thereto, for the information of the Committee on Indian Affairs of the House, I would respectfully state that from a census roll prepared by settlers upon said reserve, and forwarded to this office by Governor Medary on the 16th of December last, it appears that there are eight hundred and ten persons, including men, women, and children, who claim a residence upon the reservation; and, under instructions from the department, the agent of the tribe, late in the fall of 1856 and 1857, notified all intruders to abandon their illegal occupancy of these Indian lands, or otherwise they would be expelled by military force; but in each case, before the expiration of thirty days—that being the time specified within which they were required to vacate the lands—the weather had become severe, and as an act of clemency on the part of the government they were allowed to remain until spring, under the solemn promise that they would then remove without the exercise of coercive measures; yet they have failed to fulfil their promises in this respect.

The views of this office relative to the course of action which should be observed in effecting the expulsion of all trespassers from this reserve are contained in a letter of December 29, 1859, addressed to Governor Medary; and for the information of the committee I herewith enclose a copy of the same.

Under the provisions of the second section of the Indian appropriation bill, approved June 12, 1858, (see Statutes at Large, vol. 11, page 332,) the Commissioner of Indian Affairs is required, with the approval of the Secretary of the Interior, to remove from any tribal reservation any person found therein without authority of law; and as Congress did not make any appropriation to enable the Commissioner to carry into effect this provision of law, it was presumed that Congress intended that the military should be employed to enable him to carry out its provision; consequently the Secretary of War has, from time to time, been requested, through the Secretary of the Interior, to afford the required force, which has always been promptly granted; and therefore, upon mature reflection, I am of the opinion that no appropriation will be required for this object at the present period.

Very respectfully, your obedient servant,

A. B. GREENWOOD, *Commissioner.*

Hon. S. M. BURROUGHS,

of the Committee on Indian Affairs, House of Reps.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, December 29, 1859.

SIR: I am in receipt of your letter of the 16th instant, covering a census roll of the intruders upon the Miami national Indian reservation, showing also the value of the improvement made by each settler. I notice also with some regret the proceedings of a meeting held by the citizens of Linn county, bidding defiance to law, and pledging themselves to sustain each other in resisting the constituted authorities. This office is also advised that the agent of the tribe has been threatened with violence in the event he should dare discharge his official duties. However formidable these trespassers may be in numbers, I cannot believe that the citizens of Kansas would allow the public officers to be molested in the discharge of their official functions; and certainly the government could not be expected to retrace its steps, pending the threat, however willing its officers might be under other circumstances, to interpose for the purpose of quieting pending difficulties.

It is true that the land officers committed a grave error in allowing filings to be made upon those lands, but so soon as the error was made known the citizens should have abandoned the lands, and at least manifested a disposition not to violate our treaty obligations; so far from that, they persist in the error, and now assemble together and resolve to resist the process of the courts. It would be humiliating in any government under such circumstances to take a course that might, even by implication, be construed into an abandonment of prosecutions rightfully commenced. I infer from the published proceedings of the meeting in Linn county that the indictments are of recent date, which proves clearly to my mind that no steps were taken by the courts to punish persons who went upon those Indian lands by virtue of their filings originally; but it is the continued possession, after being fully advised of the blunder of the land officers, that has brought about the proceedings of which they now complain. Had these settlers promptly abandoned these lands, the value of their improvements would have only been nominal. I well recollect the friendly conversation I had with you in my office last summer, in which you manifested great anxiety in behalf of the settlers, and as I then understood their position I am free to say I sympathized with you and the settlers to a considerable extent, owing to the fact that their claims had originally been recognized by the local land office. I fully expected, when I parted with you here, to visit the reservation, but other public duties intervened and prevented it. If the case to which you allude was the only one where the rights of the Indians and our treaty obligations have been wholly disregarded and set at defiance in our western territories, I should at once conclude that misapprehension alone had produced so discreditable a result; but when the files of this office show that there is scarcely an Indian reservation anywhere that is exempt from the trespasses of the whites, it could hardly be expected that I should discourage prosecutions for trespasses upon the Miami lands. The time has arrived when the government must maintain its treaty obligations or confess its disability to do so. I am sure

you, as the executive of one of our Territories, would regret to see such a confession. I am aware that the second article of the treaty of 1854 authorizes the sale of the national reserve, but under existing circumstances I am unwilling to initiate a step for that purpose.

Very respectfully, your obedient servant,

A. B. GREENWOOD,
Commissioner.

Hon. S. MEDARY,
Governor, Leecompton, Kansas Territory.

Your committee are of opinion that the prayer of the petitioners should not be granted, and that the Commissioner of Indian Affairs, having ample authority to remove these trespassers, should enforce the law against them without delay; and ask to be discharged from the further consideration of the petition.

